DAMAGES—EVIDENCE—DIMINUTION OF EARNING CAPACITY.—The plaintiff, a driver of a coal wagon, who had previously been employed for fifteen years as a railroad brakeman, was injured through the negligence of the defendant. He had on file an application with the railroad to re-enter such employment, being capable at the time of fulfilling the duties of a brakeman. Evidence was given as to his earning capacity as a railroad brakeman. *Held,* that such evidence is admissible. *Millette* v. *Detroit United Ry.* (Mich.), 153 N. W. 10.

Where the plaintiff was engaged in work other than his regular occupation when injured, the general rule is that evidence of his average earnings while in his ordinary employment will be admitted, nevertheless, in ascertaining the proper measure of damages. *Evansville Furniture Co.* v. *Freeman* (Ind.), 105 N. E. 258; *Grimmelman* v. *Union Pacific Ry. Co.*, 101 Iowa 74, 70 N. W. 90. See also *Birmingham Ry., L. & P. Co.* v. *Simpson,* 177 Ala. 475, 59 So. 213. On principle, this is perfectly sound. For the reason that the injured's average earnings within a reasonable period prior to his injury, are as reliable data from which to estimate his probable future earnings as can be found. See *Cent. of Ga. Ry. Co.* v. *Perkerson,* 112 Ga. 923, 38 S. E. 365, 53 L. R. A. 210.

The general rule however is well hedged with limitations and restrictions. It is not to be understood from this rule that proof of mere speculative earning power is allowed. Only evidence of demonstrated skill and capacity is admissible. *Atlanta & W. P. Ry. Co.* v. *Newton,* 85 Ga. 883, 11 S. E. 776; *Hobel* v. *Mahoning & Shenango Ry. & L. Co.*, 229 Pa. 507, 79 Atl. 119. The facts in the case must not be such as to show that the plaintiff had no intention of reentering that employment, his earning capacity in which he desires to lay before the jury. *Helmstetter* v. *Pittsburg Ry. Co.*, 243 Pa. 422, 90 Atl. 203. Likewise, it must appear that the plaintiff was, at the time of the injury, both qualified and able to discharge the duties of such employment. *Knox* v. *American Rolling Mill,* 236 Ill. 437, 86 N. E. 90. And that the period of employment was not so remote that circumstances should have entirely changed. *Hobel* v. *Mahoning & Shenango Valley Ry. & L. Co., supra.*

DEBT—ACTIONS BY GOVERNMENT—LIMITATION OF ACTIONS—PRESUMPTION OF PAYMENT FROM LAPSE OF TIME.—The United States brought suit against defendant corporation for unpaid dividends declared twenty-eight years before on stock owned by the government in defendant corporation. *Held,* the defendant is not liable. *Chesapeake & Delaware Canal Co.* v. *United States,* 223 Fed. 926.

In accordance with the maxim ***nullum tempus occurrit regi,*** state statutes of limitation do not constitute a bar to actions by the United States. *United States* v. *Thompson,* 98 U. S. 486. It has been held, however, that the United States is subject to the statute of limitations when prosecuting a claim not strictly governmental. *United States* v. *McElroy,* 25 Fed. 804. It would seem that there was, in this case, a failure to recognize the distinction between substantive rights, of which the government on coming into the courts shares equally with the individual, and the enforcement of such rights. Thus, a state, as stockholder of a corporation, assumes the status of other stockholders, entitled to the

same substantive rights under the corporate charter. *United States Bank* v. *Planters Bank*, 9 Wheat. 904; *Southern Ry. Co.* v. *North Carolina Ry. Co.*, 81 Fed. 595. This equality, however, has no application to statutes of limitation. Such a statute relates to the remedy and as part of the *lex fori* is wholly outside of the substantive rights arising under the charter. The United States, in suing for dividends, is acting in its sovereign capacity, and is not barred by a state statute of limitation. *United States* v. *Chesapeake & Delaware Canal Co.*, 206 Fed. 964.

At common law, there is, in the absence of explanatory evidence, a presumption of payment of debt after a lapse of twenty years. *Fagan* v. *Bach*, 253 Ill. 588, 97 N. E. 1087. It has been held that this rule has no application to claims due the government. *People* v. *Columbia County*, 10 Wend. (N. Y.) 363. There is also *dictum* to the same effect. See *United States* v. *Williams*, 4 McLean 567, Fed. Cas. 16720. It is clear that there is, in these cases, confusion of thought between the statute of limitations and presumption arising from lapse of time. The former constitutes a legislative bar to the right of action. The latter, which is usually drawn from the plaintiff's case, is not a bar at all, but merely a rule of evidence affecting the burden of proof. *Gregory* v. *Commonwealth*, 121 Pa. St. 611, 15 Atl. 452; *Holway* v. *Sanborn*, 145 Wis. 151, 130 N. W. 95. The government is subjected to the same rules respecting the burden of proof, the quantity and character of evidence, the presumptions of law and fact, that attend the prosecution of a like action by an individual. *United States* v. *Stinson*, 197 U. S. 200; *In re Ash's Estate*, 202 Pa. St. 422, 51 Atl. 1030, 90 Am. St. Rep. 658. In an action by the United States to have certain land patents set aside on the ground of fraud, it was held that a presumption of legality would arise from lapse of time. *United States* v. *Beebee*, 17 Fed. 36. Though there is dearth of authority on this question, on reason and principle, presumption of payment from lapse of time would seem to apply to the government as to an individual.

INSURANCE—CONSTRUCTION OF CONTRACT—TEMPORARY BREACH OF CONDITION.—The plaintiff's motor was insured against fire by the defendant company under a policy providing that the plaintiff will not use the car for passenger service of any kind for hire. Though the car was kept by the plaintiff for his private use, it was used upon a single occasion for hire by his chauffeur, without the plaintiff's knowledge or assent. The car was later destroyed by fire without fault of the owner, while in his exclusive possession and after the above use had ceased. *Held*, the single act of the plaintiff's chauffeur did not violate the condition as set forth in the policy. *Crowell* v. *Maryland Motor Car Ins. Co.* (N. C.), 85 S. E. 37.

The general principle of construction applied by all courts to contracts of insurance is that they should be construed as any other contract, giving full effect to the intention of the parties so far as that intention is legal. *Liverpool & London & Globe Ins. Co.* v. *Kearney*, 180 U. S. 132; *Watertown Fire Ins. Co.* v. *Cherry*, 84 Va. 72, 3 S. E. 876; *Renshaw* v. *Missouri S. M. F. & M. Ins. Co.*, 103 Mo. 595, 15 S. W. 945, 23 Am. St. Rep. 904. It is also a settled rule that when the terms of a